

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2013 AUG 16 AM 9:34

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Procedural CITE AUTHORITY: West Virginia Code §18B-1-6(c)(3)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 40

TITLE OF RULE BEING AMENDED: Equal Opportunity and Affirmative Action

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

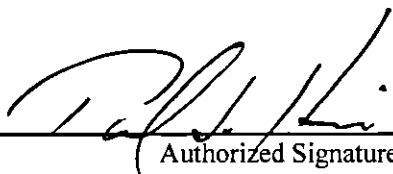
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 16, 2013 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Higher Education Policy Commission

Attention: Dr. Paul L. Hill
Chancellor

1018 Kanawha Boulevard, East, Suite 700
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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TITLE 133
PROCEDURAL RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 40
EQUAL OPPORTUNITY and AFFIRMATIVE ACTION

§133-40-1. General.
SECTION 1. GENERAL

- 1.1. Scope. This rule establishes equal opportunity and affirmative action policy.
- 1.2. Authority. West Virginia Code §18B-1-6 and §18B-1B-5.
- 1.3. Filing Date. April 3, 1992
- 1.4. Effective Date. April 3, 1992

§133-40-2. General Policy.
SECTION 2. GENERAL POLICY

- 2.1. It shall be the general policy of the West Virginia Higher Education Policy Commission (Commission) and the West Virginia Council for Community and Technical College Education (Council) to provide equal employment opportunity opportunities for to all qualified persons, employees and applicants and to prohibit discrimination in employment because of race, sex, age, color, religion, national origin, veterans status or handicap, and to take affirmative action to recruit and employ qualified faculty and staff, or harassment against any such individuals on the basis of protected characteristics. The Commission and Council consider race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity and veteran status as protected characteristics and will not permit discrimination or harassment against any employee or applicant for employment on the basis of any such characteristic. The Commission and Council will conform both to the letter and the spirit of the law and regulations with respect to prohibiting any such discrimination or harassment and will engage in affirmative action to employ, advance in employment and treat all qualified persons without discrimination in any employment practices.
- 2.2. The scope of this policy prohibiting discrimination and harassment extends, but is not limited to, the following: recruitment, employment, promotion, transfer, training, working conditions, wage and salary administration, benefits and the application of all other employment-related policies. These principles of non-discrimination and anti-

harassment also apply to the selection and treatment of independent contractors, personnel working on Commission and/or Council premises and any other persons or firms doing business with the Commission and Council.

2.3. Under the eCommission's and Council's additional authority to allocate specified functions and responsibilities among the institutions ~~under the Higher Education Policy~~ within the jurisdiction of the Commission and Council, each institution shall accept primary and long-term responsibility for the development and implementation of equal employment opportunity ~~and~~ affirmative action policies consistent with ~~all the eCommission's and Council's guidance state and federal~~ and all applicable laws and regulations.

2.34. Each institution and the ~~Higher Education Policy Commission and Council~~ Office shall take the initiative in developing or modifying its own plans to achieve compliance with the equal employment opportunity and affirmative action ~~and equal opportunity~~ policies of the eCommission and Council ~~as well as those of the~~ state and federal governments. The president of each institution shall, through appropriate means, establish and maintain a positive program of equal employment opportunity and affirmative action within her/his jurisdiction in accordance with ~~specific~~ all laws and regulations applicable to ~~her/his particular~~ the institution. The equal employment opportunity ~~and~~ affirmative action goals of the institution must be integrated into and consistent with the other performance goals of the institution. The realistic goals and timetables of each institution shall be vigorously pursued to achieve a proportional ~~representative~~ representation of minorities and women in the ~~faculty and non-faculty ranks in the workforce~~ based on ~~their~~ availability within the relevant workforce recruitment markets. The effective pursuit of affirmative action requires not only the adoption of an adequate plan, but also results-oriented procedures which designed to ensure the involvement of managers at all levels of each institution. Institutional affirmative action plans ~~are to~~ shall be submitted to the eChancellors by July 1 of each year.

2.4.5. The eChancellors shall appoint an equal employment opportunity/affirmative action advisory council, to be known as the Chancellors' Equal Employment Opportunity Council, ~~consisting~~ composed of at least one representative from each of the campuses or institutions. The eCouncil will help to facilitate the achievement of equal employment opportunity/affirmative action goals and compliance across the institutions under the Higher Education Policy Commission's and Council's jurisdiction. Under the general direction of the eChancellors, the ~~advisory eCouncil~~ shall be responsible for, but not necessarily limited to, the following ~~specific~~ specific duties and responsibilities:

- 2.4.5.1. Conducting periodic reviews of institutional equal employment opportunity/affirmative action plans and programs, while providing any assistance that may be required to improve programs and realize objectives.
- 2.4.5.2. Consulting from time to time with the eChancellors, and presidents of institutions, and/or their assistants designees on equal employment opportunity/affirmative action matters.
- 2.4.5.3. Reviewing copies of equal employment opportunity reports of all institutions (~~EEO-6 and others~~) submitted to federal agencies authorities responsible for enforcement of laws and regulations and providing consultation to the eChancellors where appropriate or as requested.
- 2.4.5.4. Helping to assure that current information affecting equal employment opportunity/affirmative action is disseminated to institutions and their employees. ~~The equal opportunity/affirmative action advisory council has the opportunity and authority to consult and cooperate with the equal opportunity/affirmative action council of the West Virginia Higher Education Policy Commission to share information and develop a statewide educational conference on related issues.~~
- 2.4.5.5. Conducting other advisory assignments as directed by the Chancellors.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 40 - Equal Opportunity and Affirmative Action

Type of Rule: Legislative Interpretive Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301
Contact: Dr. Paul L. Hill, Chancellor

Phone Number: 304-558-0699 Email: chancellor@hepc.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Series 40 - Equal Opportunity and Affirmative Action

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

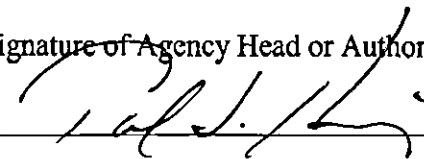
There will be no effect on cost or revenue.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: August 16, 2013

Signature of Agency Head or Authorized Representative



**West Virginia Higher Education Policy Commission
Meeting of August 9, 2013**

ITEM: Approval of Revisions to Series 40, Equal Opportunity and Affirmative Action

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the proposed revisions to Series 40, Equal Opportunity and Affirmative Action, Procedural Rule, for submission to the Secretary of State for a thirty-day public comment period.

Further Resolved, That the rule is approved for final filing at the conclusion of the comment period if no substantive comments are received.

STAFF MEMBER: Mark Toor

BACKGROUND:

Series 40, Equal Opportunity and Affirmative Action, is the procedural rule that establishes policy relating to equal opportunity and affirmative action. The current version of the rule was developed in April 1992. The Chancellor's Diversity Council has provided suggested revisions to bring the rule in compliance with federal and state regulations.

It is recommended that the Commission approve the rule for filing with the Secretary of State for a formal thirty-day public comment period and for final filing with the Secretary of State at the conclusion of the comment period if no substantive comments are received.